

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

R & R MECHANICAL, INC

Employer

and

UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPEFITTING
INDUSTRY OF THE UNITED STATES AND CANADA,
PIPEFITTERS LOCAL UNION NO. 120, AFL-CIO

Case No. 8-RC-16817

Petitioner

REPORT ON CHALLENGED BALLOT

Pursuant to a stipulated election agreement approved by me on May 26, 2006, an election was held on June 7, 2006, among employees in the following described unit:

All full-time and regular part-time employees employed by the Employer at its 3519 East 75th Street, Cleveland, Ohio location who perform pipefitting and sprinkler fitting services, excluding all other employees, employees who perform plumbing services, office clerical employees, and all professional employees, guards, and supervisors as defined in the Act.¹

The bargaining unit was comprised of approximately five eligible voters. The ballots of three voters were challenged by the Employer on the basis that they were not employees of the Employer. One employee was challenged by the Board Agent because her name did not appear on the voter eligibility list. Only one eligible voter was not challenged. In order to protect the secrecy of the ballot cast by the unchallenged voter, the ballots were impounded after the close of the polls.

¹ Paragraph 10 of the election agreement was amended to include the construction industry eligibility language as set forth in **Daniel Construction Company**, 133 NLRB 264 (1961) and **Steiny and Company**, 308 NLRB 1323 (1992). The amendment reads as follows:

In addition to those employees employed in the unit during the payroll period ending May 21, 2006, all employees in the unit who have been employed for a total of 30 working days or more within the period of 12 month immediately preceding the eligibility date for the election, or who have had some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed, shall be eligible to vote.

Pursuant to Section 102.69 of the Board's Rules and Regulations, an investigation of the challenged ballots has been made, and I hereby make the following findings and conclusions.

PREFATORY NOTE

The ballots of Jason Martin, Donald Pecjak and Jeff Zisk were challenged by the Employer on the basis that they were not employees of the Employer. In support of their respective positions, the Employer and Union presented conflicting evidence and documents regarding the eligibility of the challenged voters. I determined that the challenges to their ballots raised substantial and material questions of fact and credibility that can only be resolved at a hearing. Therefore, I shall also be issuing an Order Directing Hearing on Challenged Ballots and Notice of Hearing on this date, ordering that the challenges to these ballots be resolved at a hearing before a duly designated hearing officer.

THE CHALLENGED BALLOT

Jenni Plants was challenged by the Board Agent because her name did not appear on the voter eligibility list.

The unrefuted evidence presented during the course of the investigation establishes that Plants, a sprinkler fitter, was terminated on May 12, 2006. Because Plants was not employed by the Employer on the date of the election, I find that she was not an eligible voter. I shall therefore recommend that the challenge to her ballot be sustained.

CONCLUSIONS AND RECOMMENDATIONS

I conclude that Jenni Plants was not employed by the Employer on the date of the election. Accordingly, I recommend that the challenge to her ballot be sustained.²

Dated at Cleveland, Ohio this 23rd day of August, 2006.

/s/ Paul Lund

Paul Lund, Acting Regional Director
National Labor Relations Board
Region 8

² Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. Exceptions must be received by the Board in Washington by September 6, 2006. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and/or challenges and which are not included in this report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to attach to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.